IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 2093 OF 2007

Shakti Gandotra. ... Applicant.

V/s.

State of Maharashtra
and another. ... Respondents.

S.V.Kotwal with Vinod Kothari i/b.
M/s.Apex Law Partners for the applicant.

U.V.Nikam, APP for the State.

CORAM: V.C.DAGA, J.

DATED: 9th July 2007.

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for the State.

2. Perused application and order of the Sessions Court.

3. The learned A.P.P. raised objection that in view of the order dated 22nd June, 2007 passed by the Principal Sessions Judge, Greater Bombay in the Anticipatory Bail Application No.770 of 2007 moved by the applicant, contending that once the power is exercised by the Sessions Court granting anticipatory

bail on certain conditions, the same power cannot be exercised by this Court once again to pass contrary order or to nullify certain conditions put in that order. According to him, this can only be done if the order is challenged in accordance with law.

4. In reply, learned counsel for the applicant submitted that under section 438 of the Code of Criminal Procedure (Cr.P.C.), the High Court as well as Sessions Court have concurrent jurisdiction to grant pre arrest bail and, therefore, this application is perfectly maintainable and that it is not necessary to challenge the order granting bail by the Sessions Court.

5. Having heard rival parties, as far as concurrent jurisdiction of both Courts is concerned, it is not in dispute. However, if the anticipatory bail application is allowed by the Sessions Court either in toto or in part with certain conditions, then, in my opinion, the same power is not available to this Court for being exercised either to nullify the conditions put by the Sessions Court while granting anticipatory bail or to take away the effect thereof. If anybody is aggrieved by the order of the Sessions Court, then challenge to that order needs to be set up either by invoking revisional jurisdiction or writ jurisdiction or any other permissible

provision of law but section 438 cannot be used to get over the order of the Sessions Court. The effect thereof cannot be nullified by resorting to section 438 of Cr.P.C.

6. In this view of the matter, application is rejected as not maintainable.

JUDGE